



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-05-87-T

Date: 29 September 2006

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 29 September 2006

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

DECISION ON SRETEN LUKIĆ'S AMENDED RULE 54 *BIS* APPLICATION

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Background

1. In “Sreten Lukić’s Motion, Pursuant to Rule 54 *bis* for a Binding Order Directed to Serbia-Montenegro for Production of Documents”, filed on 17 May 2006 (“First Application”), Sreten Lukić (“Applicant”) asked the Trial Chamber to order the Government of the Republic of Serbia (“Serbia”)¹ to produce to the Applicant a large number of documents pursuant to Rule 54 *bis* of the Rules of Procedure and Evidence (“Rules”). The Trial Chamber considered the various filings made in respect of the First Application² and held a hearing on 6 July 2006, where it was established that some documents had been produced and that decisions regarding the production of others were in the process of being made.

2. In the “Order Arising from Hearing on Sreten Lukić’s Rule 54 *bis* Application”, filed on 10 July 2006 (“Order”), the Chamber invited the Applicant and Serbia to undertake further attempts at agreement concerning the Applicant’s requests. To that end, the Chamber directed the Applicant to refine outstanding elements of the First Application into two additional requests to Serbia, which the Applicant submitted,³ and instructed Serbia to submit a report, also submitted,⁴ regarding the documents which it represented it was in the process of deciding whether to produce. In the event that negotiations should not resolve matters, the Order stated that the Applicant could submit an amended application provided that it “(i) identify the particular documents sought under each paragraph of the [First] Application which have not been produced and which do not fall under another paragraph of [that] Application; and (ii) explain the steps that Lukić has taken to secure Serbia’s assistance”.⁵

3. “Sreten Lukić’s Amended Application Pursuant to Trial Chambers [*sic*] Order from 10th of July” (“Amended Application”) was filed on 21 August 2006. In it, the Applicant identifies 13 requests contained in the First Application which he submits are still unresolved. Additionally, the Applicant states that Serbia has not produced documents listed in annexes accompanying both of

¹ Although the First Application sought an order directed to the “State Union of Serbia-Montenegro and its constituent governmental organs”, Sreten Lukić’s Motion, Pursuant to Rule 54 *bis* for a Binding Order Directed to Serbia-Montenegro for Production of Documents, 17 May 2006 (“First Application”), para. 31, given that the State Union of Serbia and Montenegro has dissolved, that the relevant authorities discussed in the First Application are Serbian rather than Montenegrin and that the parties agreed as much at the 6 July 2006 hearing, the First Application will be construed as seeking an order directed to the Government of the Republic of Serbia.

² See Serbia and Montenegro’s Response Relating to the [*sic*] Sreten Lukić’s Motion, Pursuant to Rule 54 *bis*, for a Binding Order Directed to Serbia and Montenegro for Production of Documents, 2 June 2006; Sreten Lukić’s Motion for Leave to File Reply Brief Pursuant to Rule 54 *bis*, *Instanter*, 28 June 2006.

³ See Sreten Lukić’s Notification on Submission of Refined Request to Serbia for Production of Documents Pursuant to Chambers [*sic*] Order from 10th of July, 18 July 2006 (dated 12 July 2006) (“First Refined Request”); Sreten Lukić’s Notification on Submission of Second Refined Request to Serbia for Production of Documents Pursuant to Chambers [*sic*] Order from 10th of July, 11 September 2006 (dated 7 August 2006) (“Second Refined Request”). Although the Second Refined Request was filed over a month after the date specified in the Order, the Trial Chamber accepts it because it materially assists the Chamber in ruling on the Amended Application.

⁴ See Republic of Serbia’s Report Relating to Order Arising from the Hearing on Sreten Lukić’s Rule 54 *bis* Application, 3 August 2006 (dated 28 July 2006) (“Serbia’s Report”).

the Applicant's refined requests. Serbia filed a Response to the Amended Application on 30 August 2006.⁶

4. In his First Application, dated 17 May 2006, the Applicant states that "the efforts that have been undertaken by the defense to attempt to obtain the documents without resorting to Rule 54 *bis* . . . consist[] of numerous written communications with various state organs of Serbia-Montenegro, dating from November 2005 through the present."⁷ The First Application lists 26 letters to Serbian government representatives, dated between 10 November 2005 and 14 April 2006,⁸ which the Applicant submits are "not the only evidence of diligence on the part of the Lukic team, for it must be considered the countless telephone follow-ups and communications that occurred during the aforementioned time period."⁹ In addition, says the Applicant, "23 separate meetings were held with various functionaries and officials within the MuP relative to the foregoing requests for production, including officials of the highest level of authority (ie., a meeting with the Minister of Internal Affairs, Mr. Jovic, as well as his Assistant Minister of Internal Affairs)."¹⁰ Those meetings, the Applicant states, "do not include meetings with other organs of the government, including a) the Army of SCG; b) The Government of the Republic of Serbia; c) The National Council of Ministers for Cooperation with the ICTY; and d) the Prime Minister's Office."¹¹ As stated in the Amended Application, counsel for the Applicant "travelled to Belgrade, and on 19 July 2006 and 20 July 2006 met with various officials to attempt to gain some progress in the documents being sought."¹² Since those meetings, "the support staff of the Defense have been in constant contact with the state authorities, and have met with various organs to pick up documentation, or press for other documentation."¹³

Applicable law

5. Article 29 of the Statute of the Tribunal obliges States to "co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations

⁵ Order Arising from Hearing on Sreten Lukić's Rule 54 *bis* Application, 10 July 2006 ("Order"), para. 31(4).

⁶ See Republic of Serbia's Response to the Amended Application Pursuant to the Trial Chamber's Order from 10th of July 2006 ("Serbia's Response"). Although this submission was filed five days after the date specified in the Order, the Trial Chamber accepts it because it materially assists the Chamber in ruling on the Amended Application.

⁷ First Application, para. 22.

⁸ See *ibid.*, para. 23.

⁹ *Ibid.*, para. 24.

¹⁰ *Ibid.*, para. 26 (citation, listing dates of the 23 meetings as between 16 November 2005 and 28 April 2006, omitted).

¹¹ *Ibid.*, para. 27.

¹² Sreten Lukić's Amended Application Pursuant to Trial Chambers [*sic*] Order from 10th of July, 21 August 2006 (the "Amended Application"), para. 1. See also *ibid.* ("The meetings took place with the BIA (the successor to the State Security Service) as well as with the National Council for Cooperation with the ICTY (with a representative of the Ministry of Defense present).")

¹³ *Ibid.*

of international humanitarian law.”¹⁴ This obligation includes the specific duty to “comply without undue delay with any request for assistance”.¹⁵

6. A party seeking an order that a State produce documents or information must, pursuant to Rule 54 *bis*(A), “(i) identify as far as possible the documents or information to which the application relates; (ii) indicate how they are relevant to any matter in issue before the Judge or Trial Chamber and necessary for a fair determination of that matter; and (iii) explain the steps that have been taken by the applicant to secure the State’s assistance.”¹⁶

7. With regard to Rule 54 *bis*(A)(i), a “request for production under Rule 54*bis* should seek to ‘identify specific documents and not broad categories’ but [] the use of categories is not prohibited as such”¹⁷ because the

“underlying purpose of the requirement of specificity is to allow a State, in complying with its obligation to assist the Tribunal in the collection of evidence, to be able to identify the requested documents for the purpose of turning them over to the requesting party.” Therefore, a category of documents may be requested so long as it is “defined with sufficient clarity to enable ready identification” by a State of the documents falling within that category.¹⁸

A “Trial Chamber’s decision on a Rule 54*bis* request is a discretionary one”,¹⁹ and it is therefore for the Chamber alone to determine whether an application satisfies Rule 54 *bis*(A)(ii)’s requirements that the requested documents are relevant to, and necessary for, a fair determination of any matter in issue.²⁰ A State consequently cannot “narrow a request for documents or information under Rule 54*bis* to materials that it deems to be . . . necessary for a fair hearing.”²¹ Finally, Rule 54 *bis*(A)(iii) requires an applicant merely to “explain the steps that have been taken . . . to secure the State’s assistance”, but the implicit obligation is to demonstrate that, prior to

¹⁴ Statute of the Tribunal, art. 29(1). See also *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-AR108*bis*, Judgement on the Request of the Republic of Croatia for Review of Trial Chamber II of 18 July 1997, 29 October 1997 (“*Blaškić* Decision”), para. 26 (“The exceptional legal basis of Article 29 accounts for the novel and indeed unique power granted to the International Tribunal to issue orders to sovereign States (under customary international law, States, as a matter of principle, cannot be ‘ordered’ either by other States or by international bodies”).

¹⁵ Statute of the Tribunal, art. 29(2).

¹⁶ Rule 54 *bis*(A).

¹⁷ *Prosecutor v. Milutinović*, Case No. IT-05-87-AR108*bis*.2, Decision on Request of the United States of America for Review, 12 May 2006 (“*Milutinović* Appeals Decision”), para. 15 (quoting *Blaškić* Decision, para. 32).

¹⁸ *Ibid.* (quoting, in both instances, *Prosecutor v. Kordić and Čerkez*, Decision on the Request of the Republic of Croatia for Review of a Binding Order, Case No. IT-95-14/2-AR108*bis*, 9 September 1999, paras. 38-39).

¹⁹ *Ibid.*, para. 6 (citations omitted).

²⁰ See *ibid.*, para. 21 (A “State may not challenge whether, on the basis of the request, the Trial Chamber was able ‘to accurately determine the relevance of the documents sought.’ Such a determination is an integral part of the Trial Chamber’s competence to determine relevancy. The Appeals Chamber holds that the same rule applies with regard to challenging the necessity of documents or information for a fair determination of the trial.”) (citations omitted).

²¹ *Ibid.*, para. 27.

seeking an order from the Trial Chamber, the applicant made a reasonable effort to persuade the State to provide the requested information voluntarily.²²

Discussion

8. The Applicant states that his Amended Application identifies “the particular documents sought under each paragraph [of the First Application] which [have] not been produced”²³ and “mention[s] only paragraphs which relate[] to un[re]solved requests.”²⁴ Accordingly, the Applicant’s submission requests only the documents or information identified in the Amended Application. For the sake of simplicity and consistency, however, the Trial Chamber will use the paragraph numbers corresponding to those of the First Application.

9. **Paragraph 12(e):** The Applicant reformulated this request in his First Refined Request,²⁵ and now submits that he has “been provided only a tabular overview of disciplinary proceedings, and documentation regarding disciplinary measures from the Ministry of [] Internal Affairs, without other [requested] documentation”.²⁶ Serbia responds that its National Council for Cooperation with the ICTY (the “National Council”) received the Applicant’s First Refined Request on 12 July 2006 and “forwarded [it] to the Ministry of Defence, which informed the National Council on 28 July 2006 that Military Intelligence Agency (VBA) does not have the aforementioned information”.²⁷ The Trial Chamber notes, however, that the Applicant’s reformulated request was not directed only to the VBA, and that some of the requested material – such as, for example, “[c]opies of the criminal charges, during the period of January 1, 1999, . . . through June 20, 1999, submitted against . . . civilians of Serbian, Albanian and other ethnicity”²⁸ –

²² See *ibid.*, para. 28 (A “party must explain the reasonable steps that it has taken to secure the State’s assistance prior to making a Rule 54bis request.”).

²³ Amended Application, para. 3.

²⁴ *Ibid.*

²⁵ See First Refined Request, para. 3:

The Defense team, following the Trial Chamber’s Order specifies its request and further requires the following:

- a) Copies of the criminal charges, during the period of January 1, 1999, . . . through June 20, 1999, submitted against:
 - i) members of active and reserved [*sic*] police forces;
 - ii) members of active and reserved [*sic*] military forces;
 - iii) civilians of Serbian, Albanian and other ethnicity.
- b) Copies of the requests for disciplinary actions based on previously explained methodology;
- c) Copies of the requests for disciplinary actions against members of the Ministry of Internal Affairs caused by:
 - i) Violations of rules of work ethic in Kosovo and Metohija during the period of June 1, 1998, through December 12, 1998, [and] January 1, 1999, . . . through June 20, 1999. In connection with the above stated, it is necessary that you submit the final judgments of the above-mentioned disciplinary actions (previously requested documentation is sought from all of the Internal Affairs Secretaries situated in Republic of Serbia . . .).

²⁶ Amended Application, para. 4.

²⁷ Serbia’s Response, para. 4.

²⁸ See First Refined Request, para. 3.

is likely to be in the possession of other agencies, such as the Ministry of Justice. The Chamber considers that the reformulated request is “‘defined with sufficient clarity to enable ready identification’ by a State of the documents falling within that category”²⁹ and indicates how the requested documents are relevant and necessary to a fair determination of a matter in issue.³⁰ Given the Applicant’s requests to, and meetings with, Serbian officials, as well as Serbia’s failure to respond adequately to the Applicant’s reformulated request, the Chamber also considers that the Applicant has made a reasonable effort to persuade Serbia to produce the requested documents voluntarily.

10. **Paragraph 12(f):** The Applicant reformulated this request, which concerns the “KiM [Kosovo-Metohija] Dossier”, in his Second Refined Request. In that document, the Applicant stated that he had “received partial documentation[] from [the] dossier which relates to [certain] municipalities”, and urged Serbia to provide “the remaining municipalities”.³¹ Additionally, the Applicant requested “the table of contents for the separate portions of the KiM dossier (A, B, B*, V, G, D, E, Z, J, K)”,³² stating that, “[t]hrough the index of aforementioned dossiers[, he can] further specify the documentation therein [which is] the most important”³³ and which, presumably, the Applicant might later request from Serbia. The Trial Chamber therefore considers this request

²⁹ *Milutinović Appeals Decision*, para. 15 (citation omitted).

³⁰ See First Application, para. 18:

Certain of the documents are of an exculpatory nature for General Lukic personally, and the MuP [Ministry of the Interior] generally. These documents evidence develop, or otherwise deal with the topics of . . . (d) Establishing the lawful and proper peace-officer duties of MuP Personnel, who were investigating, and processing perpetrators of criminal acts in Kosovo-Metohija, without regard to the ethnicity of the perpetrator or the victim. . . . (e) Establishing that all verified information relating to suspected war crimes on the territory of Kosovo-Metohija were investigated by the MuP according to their abilities, and where perpetrators were discovered, they were arrested, processed, and information submitted to the state judicial organs for prosecution. . . . (h) Establishing the efforts of Lukic specifically and the MuP generally to uncover perpetrators of war crimes within the MuP and to investigate, arrest and submit reports to the court prosecutor’s office for trials against these individuals.

³¹ Second Refined Request, para. 3. The “remaining municipalities” are: “Decani, Dragas, Glogovac, Gnjilane, Istok, Kosovska Kamenica, Klina, Kosovo Polje, Leposavic, Lipljan, Malisevo, Kosovska Mitrovica, Novo Brdo, Obilic, Pec, Podujevo, Pristina, Prizren, Strpce, Stimlje, Urosevac, Vitina, Zubin Potok, Zvecan”.

³² *Ibid.* See also *ibid.*:

“Dossier A” – registered security occurrences with deaths relative to armed skirmishes on the territory of Kosovo and Metohija, with appendixes; “Dossier B” – registered security occurrences about criminal acts committed upon the victims of Albanians on the territory of Kosovo and Metohija, with appendixes; “Dossier B*” – registered security occurrences about criminal acts committed upon the victims of Serbs, Montenegrins, non-Albanians on the territory of Kosovo and Metohija, with appendixes; “Dossier V” – functioning, discipline and legality of police work in Kosovo and Metohija; “Dossier G” – organization, authority and command of the police and relations with the army of Yugoslavia in the territory of Kosovo and Metohija; “Dossier D” – registered security occurrences relating to missing persons on the territory of Kosovo and Metohija, with appendixes; “Dossier E” – registered security occurrences relating to charges of the ICTY indictment regards [*sic*] to the armed conflict in Kosovo and Metohija, with appendixes; “Dossier Z” – organization, activities, and affects [*sic*], of terrorist activities of Albanian terrorists in Kosovo and Metohija; “Dossier J” – registered security occurrences relating to NATO air attacks on territory of Kosovo and Metohija, with appendixes; “Dossier K” – antiterrorist actions on the territory of Kosovo and Metohija, with appendixes.

³³ *Ibid.*

to be limited to the enumerated “remaining municipalities” and the “table of contents for the separate portions of the KiM dossier”. In its response filed 30 August 2006, Serbia states that the Applicant’s reformulated request was “forwarded on behalf of the National Council to the state authorities.”³⁴ Serbia also “stress[es] . . . that Lukic’s Defence Team . . . is allowed to search the archives of the Ministry of Interior . . . if the Team is of the opinion that such documents might exist within the Ministry”.³⁵ The Chamber considers this an unsatisfactory response, as inviting a party to search what are probably immense archives, while giving no indication of whether the documents sought exist at all, is not an answer given in the spirit of cooperation. The Trial Chamber, noting that the Applicant’s request complies with the requirements of Rule 54 *bis*,³⁶ considers that the Applicant is entitled to the requested documents.

11. **Paragraph 12(h):** Serbia states that “the documentation in question [was] produced to Lukic’s Defence on 21 August 2006”, and that “the documentation produced presents the only ‘Minutes of the meetings of the collegiums of the Minister of Internal Affairs from 1998 and 1999’ that were preserved from the NATO bombing in 1999.”³⁷ Accordingly, the Trial Chamber considers this request resolved.

12. **Paragraph 12(i):** In his First Refined Request, the Applicant reiterated his request, first made in a 15 December 2005 letter, for “the Official document (one document) of the Internal Affairs Minister from May or June, 1997, that was forwarded to all the units of the Ministry of Internal Affairs, and that specifies the scope of duties and obligations of the supervising members of the Ministry of Internal Affairs (in particular Generals).”³⁸ In his Amended Application, the Applicant states that the “requested document (one document) . . . has not been provided to the defense.”³⁹ Serbia responds that “the Minister of Interior informed the National Council on 2 June 2006 that it does not possess [the requested] telex from Minister of the Interior[] This information was presented . . . during the Hearing . . . on 6 July 2006”.⁴⁰ On further review of the matter, the Trial Chamber considers this request resolved.

³⁴ Serbia’s Response, para. 5.

³⁵ *Ibid.* Serbia also offers this response with respect to Paragraph 12(e), *see ibid.*, para. 4.

³⁶ The requested municipalities and the table of contents are identified with sufficient detail, are relevant and necessary to a fair determination of a matter in issue, *see supra* note 30 and First Application, para. 18 (“Certain of the documents are of an exculpatory nature for General Lukic personally, and the MuP generally. These documents evidence develop, or otherwise deal with the topics of . . . (g) Establishing that the KLA was heavily armed and financed and widespread throughout Kosovo-Metohija and participated in a wide-scale criminal and terrorist campaign in Kosovo-Metohija, against civilians, the police, and state structures.”), and the Applicant has made a reasonable effort to persuade Serbia to produce the requested documents voluntarily.

³⁷ Serbia’s Response, para. 6.

³⁸ First Refined Request, para. 4.

³⁹ Amended Application, para. 8.

⁴⁰ Serbia’s Response, para. 7.

13. **Paragraph 12(j):** The Applicant reformulated this request, originally made in a 15 December 2005 letter, in his First Refined Request,⁴¹ and reiterates it in his Amended Application.⁴² Serbia responds only to paragraph (b) of this request, which seeks “Acts describing criteria in assigning the territory of the units of PJP and SAJ”. Serbia states that the criteria were “the same as in other units outside KiM, and [] the candidates had to fulfil conditions that were set out by the then applicable Law on the Internal Affairs, which stated that only those capable of military service could assign within Police reserve units.”⁴³ Serbia also submits that this information “will be discussed on the next session of the Government of the Republic of Serbia.”⁴⁴ The Trial Chamber finds that the request is sufficiently detailed, relevant and necessary for a fair determination of a matter in issue⁴⁵ and that the Applicant has made a reasonable effort to persuade Serbia to produce the requested documents voluntarily.

14. **Paragraph 12(k):** With regard to this request, which seeks “[r]eports on the activities of the PJP, SAJ and JSO particularly for the year 1999”,⁴⁶ Serbia states that documents were “discussed on the National Council’s session held on 25 August 2006 and forwarded to the Government of the Republic of Serbia for further procedure. Production of the documentation in question . . . will be discussed on the next session of the Government of the Republic of Serbia.”⁴⁷ The Trial Chamber finds, for the same reasons as those regarding Paragraph 12(j), that the request is sufficiently detailed, relevant and necessary for a fair determination of a matter in issue and that the Applicant has made a reasonable effort to persuade Serbia to produce the requested documents voluntarily.

15. **Paragraph 12(p):** Serbia states that the “documentation in question [was] produced to Lukic’s Defense on 21 August 2006”,⁴⁸ and the Trial Chamber accordingly considers this request resolved.

⁴¹ See First Refined Request, para. 5:

On December 15, 2005, the Defense Team of Sreten Lukic filed a Motion [*sic*] requesting the submission of:

- a) Personal [*sic*] orders of the Commanders of PJP, SAJ and their units for the period of 1998, and 1999. We specifically insist on submission of the orders assigning the territories of the Commanders of the special police units (PJP) and special antiterrorist units in Pristina and Belgrade. Also, a decision about the territorial assignment of Mr. Zivko Trajkovic;
- b) Acts describing criteria in assigning the territory of the units of PJP and SAJ.

⁴² See Amended Application, para. 9.

⁴³ Serbia’s Response, para. 8.

⁴⁴ *Ibid.*

⁴⁵ See First Application, para 18 (“Certain of the documents are of an exculpatory nature for General Lukic personally, and the MuP generally. These documents evidence develop, or otherwise deal with the topics of: (a) Illustrating the limits of the authority of the head of staff in the MuP; (b) Establishing the true chain of command and chain of reporting of the MuP; (c) Establishing the type of reporting and information available to General Lukic”).

⁴⁶ First Application, para. 12(k). See also Second Refined Request, para. 5; Amended Application, para. 7.

⁴⁷ Serbia’s Response, para. 8.

⁴⁸ *Ibid.*, para. 10.

16. **Paragraph 12(r):** This request, which initially sought the “daily and regular evidence and activity reports of the OUP and SUP stations in Kosovo-Metohija from the same times and locations of incidents alleged in the indictment”,⁴⁹ was reformulated in the Applicant’s the First Refined Request.⁵⁰ Serbia responds, “The National Council forwarded [the] more precise Lukic[] RFA from 12 July 2006 [the First Refined Request] to the Ministry of Interior, which informed that, due to the large number of municipal police stations, this kind of documentation was never created and is not in possession of the Ministry of Interior.”⁵¹ The Trial Chamber is not in a position to gainsay Serbia’s submission and will therefore deny the Applicant’s request.

17. **Paragraph 13(a):** This request, which initially sought “[o]fficial and other information relative to the events and the identities of persons killed in Kosovo-Metohija . . . , including any information relative to the participation of persons killed in the indictment in the KLA”,⁵² was reformulated in the Applicant’s the First Refined Request.⁵³ Serbia states that “‘White Books’, which represents [*sic*] official publication of the Government of Serbia Ministry of Foreign Affairs, was produced to the Defence Team on 21 August 2006. Documentation encloses six books and represent summary of the most important facts relating to security measures, incidents and war crimes in Kosovo and Metohija for the period March 1998 to June 1999.”⁵⁴ The Trial Chamber finds that the Applicant’s request satisfies the requirements of Rule 54 *bis*.⁵⁵ Should the Applicant

⁴⁹ First Application, para. 12(r).

⁵⁰ See First Refined Request, para. 8, which in part relies on the language of a 14 April 2006 request from the Applicant to Serbia:

[T]he daily reports from the police stations (from the eye witnesses, officials, and people on duty in police stations and their official notes), local centers and Secretaries of the Internal Affairs at whose territories the incidents occurred at the time alleged in the Indictment We further state that the Defense Team hereby refers to the dairy [*sic*] of the police officers at the places where the incidents relevant for the Indictment occurred, daily protocols of the police stations and statements from the officials at the time of the incidents. (As an example of the requested document: Part of the dairy [*sic*] from the service of OUP Stimlje about the incident in Racak on January 15, 16, 17 and 18, 1999), criminal complaints, reports of the investigators, evidence about the arrests and other evidence Ku I Pu [*sic*] marks.

⁵¹ Serbia’s Response, para. 11.

⁵² First Application, para. 13(a).

⁵³ See First Refined Request, para. 9, in which the Applicant requests:

Operational and other findings about the events and persons in Kosovo and Metohija and incidents mentioned in the Indictment, the connection between the incidents and the particular persons, findings about the eventual connection or participation of the deceased individuals in accordance with the list from the Indictment with the terrorist groups in K and M. . . . [W]e hereby request the information about the persons whose names are listed in Annex II of this Motion, their criminal background (proof of criminal check); operational findings about their eventual participation in “OVK”; information about previously filed criminal matters related to the murders, terrorism, etc., more severe criminal offenses related to those persons.

⁵⁴ Serbia’s Response, para. 12.

⁵⁵ The requested information is identified with sufficient detail, see First Refined Request, para. 9, is relevant and necessary to a fair determination of a matter in issue, see First Refined Request, para. 9 (The “Defense Team thinks that there are numerous untruthful allegations in the Indictment, and it is important to determine the difference between civilians and terrorists in the specific situations and for the sake of the defense of the accused.”), and the Applicant has made a reasonable effort to persuade Serbia to produce the requested documents voluntarily.

decide that the “White Books” are not responsive to his request, he may submit another application to the Trial Chamber seeking relief on this point.

18. **Paragraph 16(b):** The Applicant initially directed this request, for “[r]eports of the cooperative work of governmental organs with the Kosovo Verification Mission and other diplomatic missions of the international community from 1998 through 1999”,⁵⁶ to the Army of Serbia-Montenegro. The Applicant later reformulated the request in the Second Refined Request, in which he noted that the Ministry of the Interior had produced documents, but stated that he wants documents from other government agencies as well.⁵⁷ In its response, Serbia states that “[o]n 7 August 2006, Ministry of Defence forwarded to the National Council a large number of documents relating to [this request], which were discussed on the National Council’s session, held on 25 August 2006, and forwarded to the Government of the Republic of Serbia for further procedure.”⁵⁸ The Trial Chamber considers that the information from the Ministry of Defence, if produced to the Applicant, would not necessarily be responsive to this request, which seeks information from multiple government agencies. The Trial Chamber finds that the request is adequately detailed and that, in light of its bearing on the asserted cooperation of the Serbian government, of which the Applicant was a senior member, with various international diplomatic missions in operation during the indictment period, the request is relevant to, and necessary for, a fair determination of a matter in issue. Given that the Applicant has made sufficient efforts at obtaining this information from Serbia voluntarily, the Chamber considers that he has satisfied the requirements of Rule 54 *bis* and is entitled to the information.

19. **Paragraph 16(d):** As stated in the First Application, this request sought “[d]ocumentation from the Army relating to the most serious incidents in the Indictment”.⁵⁹ The Trial Chamber ordered the Applicant to “identify more precisely the documents sought under this paragraph”,⁶⁰ and the Applicant now seeks “documents of the National Army of Serbia and Montenegro related to the most sever[e] incidents from the Indictment.”⁶¹ This reformulation is just as vague as the initial request, and therefore fails to satisfy Rule 54 *bis*(A)(i).

⁵⁶ First Application, para. 16(b).

⁵⁷ See Second Refined Request, para. 7, in which the Applicant states that he has received reports, informations [*sic*], telexes, and notes by the Ministry of Internal Affairs . . . , [but] we need in addition to the produced documents reports of other competent state organs, such as the Federal Ministry of Foreign Affairs, Ministry of the Defense, and the competent organ of the Federal Government formed precisely for the purpose of liaison with the KVM, KDOM and EU. The documentation sought should include reports, correspondence, official notes, and other documentation.

⁵⁸ Serbia’s Response, para. 14.

⁵⁹ First Application, para. 16(d).

⁶⁰ Order, para. 27.

⁶¹ First Refined Request, para. 11.

20. **Paragraph 16(e):** In his Second Refined Request, the Applicant acknowledged receipt of certain documents related to this request but stated that he had yet to receive “[t]op level reports on the effectiveness of anti-terrorists activities in 1998 and 1999”, “the minutes of the 29.10.1998 presentation of the plan ‘Analysis and realization of the fifth stage of the operative plan to combat terrorism’ and the ‘operative plan of the intra-bureau staff on the realization of the Operation ‘Grom/Thunder’”.⁶² The Applicant reiterates this request in his Amended Application.⁶³ Serbia responds that “one report in relation to anti-terrorist activities . . . [was] produced to Lukic’s Defence on 10 July 2006,”⁶⁴ but it is clear that the Applicant seeks more than “one report”. The Trial Chamber finds that the three categories of documents requested here are described with sufficient detail and are both relevant to, and necessary for, the fair determination of a matter in issue.⁶⁵ Moreover, the Applicant has made a reasonable effort to obtain these documents from Serbia voluntarily.

21. **Paragraph 16(g):** In his Second Refined Request, the Applicant acknowledged receipt of certain documents related to this request but stated that he had yet to receive “two documents which [G]eneral Delic provided in the Milosevic proceedings.”⁶⁶ General Delić testified for 18 days in the *Milošević* trial, during which time 15 exhibits, one of which had at least 630 “tabs”, were introduced.⁶⁷ Given that the Applicant does not describe to the Trial Chamber the two requested documents with adequate detail or explain their relevance and necessity to trial, the Chamber finds that this request does not satisfy Rule 54 *bis*. In any event, the Applicant is free to direct his request to the Registrar of the Tribunal, who normally will provide exhibits from *Milošević* or other trials so long as they are identified adequately and were not admitted under seal.

22. **Annex I of the First Refined Request:** In his Amended Application, the Applicant states that “the documents listed in annex I of the filing dated 12th of July 2006 have not been provided, and are still outstanding.”⁶⁸ Serbia responds that it

fails to comprehend this kind of statement . . . , since [a] large number of the documents listed both in the Annex I . . . as well as in the other Lukic[] R[equests] F[or] A[ssistance] have been produced to the Defence Team . . . , while only the small amount of documents requested by Lukic are still being either sought by the

⁶² Second Refined Request, para. 8. *See also ibid.* (“The defense of Sreten Lukic wishes at this time to confirm that from the documentation herein above, has received documents under part 2) [and] part 4) The defense of Sreten Lukic stands by its request point on the part 1), 3) 5) [the three requests identified in the text accompanying this footnote] above.”).

⁶³ Amended Application, para. 15.

⁶⁴ Serbia’s Response, para. 16.

⁶⁵ Although “Operation Grom/Thunder” is not defined, presumably it relates, as all other documents sought in this request, to Serbia’s antiterrorist activities, which the Trial Chamber considers to be a matter in issue.

⁶⁶ Second Refined Request, para. 14.

⁶⁷ *See Prosecutor v. Milošević*, Case No. IT-02-54-T, T. 41238 (21 June 2005)–42680, 44374–44507, 44689–44808 (29 September 2005).

⁶⁸ Amended Application, para. 17.

relevant state authorities or are in procedure for production to the Defence Team.⁶⁹

Annex I lists 12 categories of documents which the Applicant seeks from the Ministry of the Interior. Also, the documents are identified, some more specifically than others, but not a word is said regarding how they are relevant to, and necessary for, the fair determination of a matter in issue. It may be that the Applicant would be entitled to these documents if he were to make the requisite showings in a proper Rule 54 *bis* application. The fact that he has not done so here, even apart from Serbia's submission that most of the documents have been or will be produced, precludes a finding in his favour.

23. **Annex of the Second Refined Request:** This request seeks seven categories of documents from the Ministry of the Interior, three categories of documents from the Ministry of Foreign Affairs and four categories of documents from the Ministry of Defence. The Annex indicates that the Applicant first requested the documents from the various ministries on 21 July 2006, and the Applicant obviously reiterated these requests in his 7 August 2006 Second Refined Request. The Applicant does not describe, however, any meetings or other communications he has had with Serbia regarding this request, which suggests that, in light of his many other voluminous requests, the Applicant might not yet have made a reasonable effort at obtaining the documents from Serbia voluntarily. In any case, as with Annex I to the First Refined Request, the Annex here merely lists categories of documents without providing any explanation of the documents' relevance and necessity to trial. Accordingly, the Applicant has not satisfied the requirements of Rule 54 *bis*.

⁶⁹ Serbia's Response, para. 18.

Disposition

24. For the reasons above, and pursuant to Article 29 of the Statute and Rules 54 and 54 *bis* of the Rules, the Trial Chamber **GRANTS** the Amended Application in part and **ORDERS** as follows:

- (1) to the extent that the Government of the Republic of Serbia has not yet produced the documents described in Paragraphs 12(e), 12(f), 12(j), 12(k), 16(b) and 16(e) above, Serbia shall produce such documents to the Applicant within 14 days of this Decision;
- (2) given that the Applicant has not satisfied the requirements of Rule 54 *bis* with respect to his other document requests, whether contained in the First Application, Amended Application, the refined requests or their annexes, the Applicant's request for an order regarding those documents is denied.

Done in English and French, the English text being authoritative.

Dated this twenty-ninth day of September 2006
At The Hague,
The Netherlands.

Judge Iain Bony
Presiding

[Seal of the Tribunal]